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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0255; FRL-9972-78-Region 9]

Determination to Defer Sanctions; Arizona Department of Environmental Quality; PM_{2.5}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the State of Arizona has corrected a deficiency in its Clean Air Act (CAA or Act) state implementation plan (SIP) provisions concerning air permitting. Specifically, based on a proposed conditional approval published elsewhere in this **Federal Register**, and based on a prior proposed approval, previously published in the **Federal Register**, EPA is making an interim final determination that the State of Arizona (State) has satisfied the requirements of part D of the CAA permitting program for areas under the jurisdiction of the Arizona Department of Environmental Quality (ADEQ) with respect to fine particulate matter (PM_{2.5}) precursors. The effect of this interim final determination that the State has corrected the deficiency in the permitting program is that the imposition of sanctions that were triggered by a previous limited disapproval action by EPA in 2016 is now deferred. If the State meets its commitment that is the basis for the conditional approval, relief from these sanctions will become permanent upon the EPA's full approval of the State submission. If the EPA determines that the State has not met its commitment and the conditional approval is converted to a disapproval, these sanctions will no longer be deferred.

DATES: This interim final determination is effective on **[Insert date of publication in the Federal Register]**. However, comments will be accepted until **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit comments, identified by Docket ID No. EPA-R09-OAR-2017-0255, at <https://www.regulations.gov>, or via email to R9airpermits@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region 9, (415) 972-3811, beckham.lisa@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Background
- II. EPA Action
- III. Statutory and Executive Order Reviews

I. Background

On June 22, 2016 (81 FR 40525), the EPA finalized a limited disapproval of ADEQ's nonattainment New Source Review (NA-NSR) program because it did not fully address fine $PM_{2.5}$ precursors as required by section 189(e) of the Act (referred to hereinafter as "our 2016 $PM_{2.5}$ precursor action"). Our 2016 $PM_{2.5}$ precursor action was a final limited disapproval action under title I, part D of the Act, relating to requirements for $PM_{2.5}$ precursors in nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this action under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of July 22, 2016, and highway sanctions 6 months following imposition of the offset sanctions.

On March 21, 2017, ADEQ revised its New Source Review (NSR) permitting program rules and on April 28, 2017, ADEQ submitted revised NSR permitting rules to the EPA for approval into the Arizona SIP (April 2017 NSR submittal), including rules intended to address the limited disapproval issue under title I, part D that we identified in our 2016 $PM_{2.5}$ precursor action. On June 1, 2017, we proposed approval of the April 2017 NSR submittal, based in part on a finding that the submittal addressed most of the deficiencies with ADEQ's NA-NSR program identified in our 2016 $PM_{2.5}$ precursor action. See 82 FR 25213, 25219 (June 1, 2017); May 2017 Technical Support Document (TSD) supporting our June 1, 2017 proposed rule action at 21-22.

To address the remaining deficiency identified by the EPA in our 2016 PM_{2.5} precursor action, which pertains to a particular requirement regarding the regulation of ammonia as a PM_{2.5} precursor, in a letter dated December 6, 2017, ADEQ committed to adopt revisions to provisions in ADEQ Rule R18-2-101 and/or make other specific demonstrations to satisfy the requirements of CAA section 189(e) and related EPA regulations governing ammonia as a precursor to PM_{2.5} under the NA-NSR program. The State committed to make such submissions and demonstrations no later than March 31, 2019, or within one year from the date on which the EPA takes final action on the April 2017 NSR submittal, whichever is earlier. See Letter from Timothy S. Franquist, Director, Air Quality Division, ADEQ to Alexis Strauss, Acting Regional Administrator, EPA Region 9, dated Dec. 6, 2017. In the Proposed Rules section of this **Federal Register**, we have proposed conditional approval of ADEQ's April 2017 NSR submittal with respect to the remaining deficiency identified in our 2016 PM_{2.5} precursor action concerning ammonia as a PM_{2.5} precursor under section 189(e) of the Act.

II. EPA Action

Based on the proposed conditional approval action and our June 1, 2017 proposed approval action, pursuant to 40 CFR 52.31(d)(2), we are issuing this interim final determination, effective on publication, determining that ADEQ's revised plan corrects the deficiencies that triggered the sanctions clock. The effect of this action is to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2016 limited disapproval of ADEQ's NA-NSR permitting program with respect to PM_{2.5} precursors.

The EPA is providing the public with an opportunity to comment on this interim final determination that the deficiency has been corrected and the resultant deferral of sanctions. If comments are submitted that change our assessment described in this interim final determination

and/or the proposed conditional approval of ADEQ's April 2017 NSR submittal with respect to the title I, part D deficiencies identified in our 2016 PM_{2.5} precursor action, we would take final action to lift this deferral of sanctions under 40 CFR 52.31. If no comments are submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2016 PM_{2.5} precursor action would be deferred unless and until (1) the EPA proposes or takes final action to disapprove the April 2017 NSR submittal with respect to the deficiencies identified in our 2016 PM_{2.5} precursor action, (2) the conditional approval converts to a disapproval, or (3) the EPA determines through a finding of failure to submit or through a proposed or final action disapproving in whole or in part the SIP submittal that ADEQ is required to submit to fulfill its commitment in the conditionally approved plan in accordance with ADEQ's December 6, 2017 letter. Sanctions and sanctions clocks triggered by our 2016 PM_{2.5} precursor action would be permanently terminated on the effective date of a final approval of the SIP submittal that ADEQ submits to fulfill the commitment in the conditionally approved plan.

Because the EPA has preliminarily determined that ADEQ's April 2017 NSR submittal and December 6, 2017 commitment letter address the deficiencies under part D of title I of the CAA for PM_{2.5} precursors identified in our 2016 PM_{2.5} precursor action, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through our proposed actions, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action defers sanctions and imposes no new requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action defers sanctions and imposes no new requirements.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action defers sanctions and imposes no new requirements. In addition, this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-

202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This action does not involve technical standards.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action defers sanctions in accordance with CAA regulatory provisions and imposes no additional requirements.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the EPA Administrator of this interim final determination does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 20, 2017.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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